

TITLE 8. DIVISION OF LABOR STANDARDS ENFORCEMENT

NOTICE OF PROPOSED RULEMAKING

The Division of Labor Standards Enforcement (“DLSE”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The DLSE will hold a public hearing starting at 9:00 a.m. on Tuesday, June 21, 2005, in the Auditorium of the Ronald Reagan State Building located at 300 South Spring Street, Los Angeles, CA 90013. The Auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The DLSE requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DLSE. The written comment period closes at **5:00 p.m. on Tuesday, June 21, 2005**. The DLSE will consider only comments received at the DLSE offices by that time. Submit comments to:

Allen Perlof
Deputy Chief Labor Commissioner
Division of Labor Standards Enforcement, 9th Floor West
P.O. Box 420603
San Francisco, CA 94142

AUTHORITY AND REFERENCE

Labor Code Section 98.8 authorizes the DLSE to adopt the proposed regulations, which would implement, interpret, or make specific Division 2, Part 8.5, Chapters 1 through 4, Sections 2050 through 2064, inclusive, and Section 2066 of the Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The DLSE proposes to adopt Sections 13680 through 13693, inclusive, in Title 8 of the California Code of Regulations (CCR). These sections concern the registration of employers engaged in the business of car washing and polishing.

The purpose of the proposed regulations is to define certain terms, implement the scheme for registration, both initial and renewal, delineate the conditions that must be met before an employer can be registered, implement the procedure for proceeding against the employer’s surety bond, clarify the annual registration fee and

assessment, establish that a registration cannot be transferred, and the circumstances when a registration is void, implement a citation for failing to register, and a process whereby an employer can appeal such citation, and establish the procedure for obtaining damages from the Car Wash Worker Restitution Fund.

Labor Code Section 2054 provides that every employer engaged in the business of car washing and polishing must register annually with the Labor Commissioner. Labor Code Sections 2055 and 2061, respectively, set forth conditions that must be satisfied before the Labor Commissioner can permit an employer to register or renew a registration; that is, the employer has presented proof to the Labor Commissioner of compliance with the local government's business licensing or regional regulatory requirements, the employer has obtained a surety bond for the benefit of any employee damaged by his, her, or its failure to pay wages, interest on wages, or fringe benefits, or damaged by a violation of Labor Code Section 351 (gratuities) or 353 (records regarding gratuities), the employer has documented proof that a current workers' compensation insurance policy is in effect, the employer has paid the annual registration fee and assessment, and the employer has completed and executed an application in a form prescribed by the Labor Commissioner. Additionally, Labor Code section 2062 provides that the Labor Commissioner may not register or renew the registration of an employer if any of the following circumstances exist: (a) the employer has not fully satisfied any final judgment for unpaid wages, (b) the employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code, or the Employment Development Department has made an assessment for those unpaid contributions that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions, and (c) the employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act to the Internal Revenue Service, and the employer has not fully paid the amount or delinquency for those unpaid contributions. Labor Code Section 2059 establishes an annual registration fee of \$250.00 for each branch location, and an annual assessment of \$50.00 for each branch location. The \$50.00 annual assessment shall be deposited in the Car Wash Worker Restitution Fund. Labor Code Section 2064 establishes a civil fine against an employer who fails to register, and Labor Code Section 2066 provides for liability of a successor employer.

Section 13680. Definitions.

Section 13680 will contain definitions for the terms/phrases "business days," "branch," "damaged," "other related damages," and "registration packet." "Business days" is being defined in order to clarify the concept in those situations in which it is used. The DLSE is proposing that "business days" have the same meaning as set forth in California Civil Code Section 9. "Branch" is defined because such term is not commonly used in the car washing and polishing industry. The DLSE is proposing that "branch" mean each separate location where an employer engages in car washing and polishing operations as specified in Labor Code Section 2051(a). "Damaged" is defined to clarify the concept in those situations where the term is used. The DLSE is proposing that "damaged" means the suffering of a loss or diminution of what is the employee's own. "Other related damages" is defined to clarify the concept in those situations where the phrase is used. The DLSE is proposing that "other related damages" means a loss suffered by an employee or diminution of what is the employee's own by reason of some action or inaction on the part of the employer, other than the employer's failure to pay wages and penalties. "Registration packet" is defined to clarify the concept in those situations where the phrase is used. The DLSE is proposing that "registration packet" means certain documents and items specified on an instruction sheet that must be submitted to the Labor Commissioner in order for an employer's application for registration to be processed.

Section 13681. Recordkeeping.

Section 13681 will specify Labor Code sections pursuant to which an employer is required to keep certain records, the minimum amount of time the records must be kept, the location(s) where the records must be kept,

and that the records must be available for inspection or copying, or both, by the Labor Commissioner. Additionally, Section 13681 will specify the consequences an employer faces if he, she, or it fails to produce records requested by the Labor Commissioner, or provides falsified records. Pursuant to Labor Code Section 2052, employers engaged in the business of car washing and polishing are required to keep records, some of which differ from those required of employers in other industries. The DLSE is proposing that the records required by Section 2052 be maintained at the place of employment or at a central location within the State of California, and that upon a request from the Labor Commissioner, they be made available for copying or inspection, or both. The DLSE is also proposing that the failure to provide requested records, or the providing of falsified records, is grounds for the suspension or revocation of an employer's registration, or denial of an employer's application for registration.

13682. Conditions for Registration, Initial and Renewal.

Section 13682 will specify the conditions an employer must satisfy in order for the Labor Commissioner to issue a registration. The DLSE is proposing that the employer submit to the Labor Commissioner (1) a completed and signed Application for Registration—Car Washing and Polishing, DLSE Form 666 (08/04); (2) a surety bond issued by a surety company licensed to do business in the State of California in an amount specified by the Labor Commissioner; (3) proof of compliance with the local government's business licensing or regional regulatory requirements; (4) either (a) a copy of the certificate from the Director of the Department of Industrial Relations consenting to the employer being self-insured against liability to pay compensation under the State's workers' compensation laws or (b) a certificate of insurance evidencing that a current workers' compensation insurance policy issued by an insurance company licensed to do business in the State of California is in effect;; (5) the annual registration fee required by Labor Code Section 2059(a); (6) the annual assessment required by Labor Code Section 2059(b); and (7) a complete registration packet. Additionally, the employer must have complied with any citation issued by the Labor Commissioner after the citation became final and was served on the employer.

13683. Annual Registration Fee and Assessment; Proof of Registration.

Section 13683 will specify that an employer must pay an annual registration fee for each branch it operates, and that such fee may be periodically adjusted for inflation. The Section will also specify that an employer must also pay an annual assessment for each branch it operates, and that the Labor Commissioner will issue a certificate for each branch registered by an employer.

13684. Registration, Initial and Renewal.

Section 13684 will specify that registration is annually, except for the first renewal, which may be less than 12 months or not more than 18 months, and that the registration fee will be prorated accordingly. The Section will also specify that an employer need only submit one application for all branches, and that the initial registration process will be on a staggered basis. Because a large number of employers engaged in the car washing and polishing business are concentrated in just a few counties, the DLSE is proposing that the initial registration be staggered by county. The DLSE is also proposing that if an employer operates branches in more than one county, the registration packet, which covers all branches, will be submitted during the time period specified for the branch requiring the earliest submission. Further, the DLSE is proposing that in order to distribute registration dates evenly throughout the year, the Labor Commissioner may, with respect to the first renewal of registration only, shorten to less than 12 months or lengthen to not more than 18 months the period of registration, and prorate the annual fees accordingly.

13685. Transfer of Registration Prohibited.

Section 13685 will specify that an employer may not transfer its registration to another person. The DLSE is proposing that “person” includes an individual, association, organization, partnership, joint venture, business trust, limited liability corporation, or private entity of any character.

13686. Registration Void, When

Section 13686 will specify the conditions under which an employer’s registration becomes void. The DLSE is proposing that an employer’s registration will become void when the employer (1) ceases to engage in the car washing and polishing business; (2) changes its form of legal entity; (3) transfers its registration; or (4) when the Labor Commissioner revokes an employer’s registration. The DLSE is also proposing that upon voidance of a registration, the employer will surrender to the Labor Commissioner the certificate of registration for each branch location, and that if voidance is due to a change of legal entity, the new legal entity must submit a complete registration packet, including the annual registration fee and assessment, in order for a new certificate of registration to be issued.

13687. Failure to Obtain Tax Clearance.

Section 13687 will specify that an employer’s failure to obtain a tax clearance from the Internal Revenue Service constitutes a ground for the Labor Commissioner to deny an application for registration, including a renewal.

13688. Temporary Registration.

Section 13688 will specify the circumstance under which the Labor Commissioner may issue a temporary registration. The DLSE is proposing that if the Labor Commissioner determines that the Internal Revenue Service has issued an employer a temporary tax clearance, he or she may issue the employer a temporary registration that runs concurrently with the temporary tax clearance, and expires when the temporary tax clearance expires. The DLSE is also proposing that if upon the expiration of a temporary registration the Labor Commissioner issues an employer a regular registration, the length of time during which the temporary registration was in effect will be applied to and counted against the time period for the regular registration.

13689. Citation for Failure to Register.

Section 13689 will specify that the Labor Commissioner may issue a citation and impose a civil fine if an employer operates its business without registering. The DLSE is proposing that if upon inspection or investigation it determines that an employer has failed to register, a citation may be issued and a civil fine imposed. The DLSE is also proposing that such a citation may be served personally or by registered mail.

13690. Failure to Comply with Citation for Failure to Register.

Section 13690 will specify that an employer’s failure to comply with a citation which is issued because the employer failed to register, shall, after the citation is final and has been served on the employer, constitute a ground for the Labor Commissioner to deny the employer’s application for registration, including a renewal.

13691. Appeal of Citation for Failure to Register.

Section 13691 will specify the procedure and proceedings that apply if an employer desires to contest a citation issued against it because it failed to register. The proceeding will be an informal hearing conducted in

accordance with the adjudication provisions of the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400 of the Government Code. The DLSE is proposing that a cited employer who appeals the citation and fails to appear at the time and place of the hearing shall be deemed to have withdrawn its appeal, and the citation will then constitute a final order of the Labor Commissioner, which is not subject to administrative review. The DLSE is also proposing that if a cited employer does not appeal the citation, the Labor Commissioner may file a certified copy of the citation or proposed assessment of civil fine with the superior court in a county in which the employer has property, or has or had a place of business, and the clerk of the court shall enter a judgment thereon.

13692. Immediate Family Member Defined.

Section 13692 will, for purposes of subdivision (d) of Labor Code Section 2066 define the phrase “immediate family member.” The DLSE is proposing that “immediate family member” means spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin.

13693. Action Against Bond, Inadequacy of Bond, Cancellation of Bond, Retention of Bond.

Section 13693 will specify when the Labor Commissioner or an employee may proceed against an employer’s surety bond, that the Labor Commissioner may suspend or revoke an employer’s registration, or deny an application for registration, if at any time the employer fails to provide a surety bond that meets all of the requirements of paragraphs (1) and (2) of subdivision (b) of Section 13682, and that if the surety bond is cancelled or terminated, the employer may not conduct any business until it obtains a new surety bond that meets all of the requirements of paragraphs (1) and (2) of subdivision (b) of Section 13682. Additionally, this Section will specify that the Labor Commissioner will retain the original of the bond for no less than three years after the employer ceases to engage in the business of car washing and polishing.

DOCUMENTS INCORPORATED BY REFERENCE

The following forms are incorporated by reference in Sections 13680 and 13682. These forms are not published in Title 8, California Code of Regulations, because it would be impractical and cumbersome to publish these documents in the Code of Regulations:

Car Washing and Polishing Registration Application, DLSE 666 (08/04)
Car Wash Bond, DLSE 668 (09/04)

Copies of these forms are available to the public for review Monday through Friday, except State holidays, from 8:00 a.m. to 4:30 p.m. at the Division of Labor Standards Enforcement’s Headquarters office located at 455 Golden Gate Avenue, 9th Floor West, San Francisco, California.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DLSE has made the following initial determinations:

- Mandate on local agencies and school districts: None.

- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: The DLSE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
 - (1) Create or eliminate jobs within California;
 - (2) Create new businesses or eliminate existing businesses within California; or
 - (3) Affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: None.
- Small business determination: The DLSE has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the DLSE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DLSE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Allen Perlof
 Division of Labor Standards Enforcement, 9th Floor West
 P.O. Box 420603
 San Francisco, CA 94142
 Telephone: (415) 703-4810

The backup contact person for these inquiries is:

Lucia Ceja
Division of Labor Standards Enforcement, 9th Floor West
P.O. Box 420603
San Francisco, CA 94142
Telephone: (415) 703-4810

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Perlof at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DLSE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Headquarters office located in the Hiram Johnson State Building at 455 Golden Gate Avenue, 9th Floor West, San Francisco, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Car Wash Bond, DLSE 668 (09/04), the Car Washing and Polishing Registration Application DLSE 666 (08/04), the initial statement of reasons, and the Economic and Fiscal Impact Statement, Form STD. 399. Copies may be obtained by contacting Allen Perlof at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the DLSE may adopt the proposed regulations substantially as described in this notice. If the DLSE makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the DLSE adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Allen Perlof at the address indicated above. The DLSE will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Perlof at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department Of Industrial Relations’ website at <http://www.dir.ca.gov/DIRRulemaking.html>.